

# **EXHIBIT D**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

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4 IN RE: PHARMACEUTICAL : MDL NO. 1456  
5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION  
6 PRICE LITIGATION : 01-CV-12257-PBS

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8 THIS DOCUMENT RELATES TO: :  
9 U.S. ex rel. Ven-a-Care of : Hon. Patti B. Saris  
10 the Florida Keys, Inc. :  
11 v. :  
12 Dey, Inc., et al. :  
13 No. 05-11084-PBS :

14 - - - - -x

15  
16 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

17  
18 CONTINUED DEPOSITION OF T. MARK JONES

19 Washington, D.C.

20 Tuesday, December 9, 2008

21 VOLUME IV  
22

1 inhalation, unit dose 0.083 percent, which is a  
2 drug manufactured by Dey, but it does not say  
3 whether or not Dey manufactured this particular  
4 generic drug.

5 Do you know whether or not this drug  
6 was manufactured by Dey that was the subject of  
7 this claim?

8 A. I can't say that I do, because there's  
9 no indication for it.

10 Q. Okay. Thank you.

11 Let's just quickly go over the  
12 purchases that you do know of made by Ven-A-Care  
13 in connection with litigation.

14 When was the first time Ven-A-Care made  
15 such a purchase?

16 A. I want to say I believe it was around  
17 the year 2000. We did some purchases through  
18 ANDA, which is a gen -- you know, a generic  
19 wholesale distributor, specialty distributor.

20 Q. Do you know which drugs were purchased?

21 A. I believe that it was Albuterol  
22 Ipratropium, I think, I want to say Cromolyn.

1 Cromolyn. The inhalation drugs. And it may have  
2 also been through JJ Balan as well.

3 Q. When you say Albuterol, does that  
4 include the multidose, unit dose and inhaler?

5 A. It would probably be both or all three.

6 Q. Okay.

7 A. The .083 percent, the half percent, and  
8 the multidose inhaler.

9 Q. Okay. Are there invoices for this 2000  
10 purchase?

11 A. I think we've produced invoices for  
12 them.

13 Q. So any invoices that exist would have  
14 been produced?

15 A. Yes.

16 Q. I don't think I've seen the actual  
17 invoice for --

18 A. You haven't.

19 Q. Maybe -- maybe you can point it out,  
20 take a look --

21 A. Yeah.

22 Q. -- during a break. And those would

1 prices in the marketplace for Ipratropium, yes.

2 Q. Now, turning to Roxane 90, which is the  
3 first filed qui tam complaint in this particular  
4 litigation, the DOJ litigation, I wanted to focus  
5 on the chart on the top of page 45.

6 A. Uh-huh.

7 Q. And in particular, in the third column  
8 of that chart, there's an entry for relater's  
9 cost for this particular NDC of Ipratropium  
10 Bromide of 1295.

11 A. Uh-huh.

12 Q. Am I correct in assuming that that's  
13 the price that Ven-A-Care believed was available  
14 to it as of March 2000?

15 A. Yes.

16 Q. Do you know where that price comes  
17 from, Mr. Jones?

18 A. Off the top of my head, no. It would  
19 have come from one of our pricing sources, either  
20 wholesale or distributor.

21 (Exhibit Roxane 196 was marked for  
22 identification.)

1 BY MR. GORTNER:

2 Q. I'm handing you an exhibit marked  
3 Roxane 196. It is a multipage exhibit that is  
4 Bates labeled VAC MDL 59582 through 59590 in one  
5 contiguous.

6 A. That's correct.

7 Q. And then at the end, it appears to have  
8 appended VAC MDL 12256 and VAC MDL 38629. Do you  
9 see that?

10 A. You lost me there.

11 Q. Oh. Maybe those last two documents  
12 aren't --

13 A. Yeah.

14 Q. Okay. We're taking a look first at the  
15 copies that you have. I wanted to focus your  
16 attention on the page that's Bates labeled VAC  
17 MDL 49586. And it appears to be an invoice from  
18 a company called ANDA, A-N-D-A. Do you recognize  
19 this document?

20 A. I recognize this, you know, that it's  
21 an ANDA invoice with purchases on them, yes.

22 Q. And this is a document that Ven-A-Care

1 maintained in its ordinary course of business?

2 A. Yes.

3 Q. And it was produced in this litigation,  
4 correct?

5 A. Yes.

6 Q. And looking at the order date, it has  
7 an order date of 3-13-2000, so March 13th, 2000.  
8 Do you see that?

9 A. Yes.

10 Q. And then looking across at the entry  
11 for Ipratropium Bromide approximately halfway  
12 into the item list.

13 A. With a 00054?

14 Q. Uh-huh. That appears to be Rox --

15 A. Yes.

16 Q. -- the same NDC number as in the top of  
17 page 45 of Roxane 90. Do you see that?

18 A. Uh-huh.

19 Q. And it has a unit price there of 12.95?

20 A. That's correct.

21 Q. And that's the same unit price that  
22 you've entered here on page 45 of Ven-A-Care's

1 first complaint?

2 A. Yes.

3 Q. Would that indicate to you that the  
4 price that you quoted in that complaint on page  
5 45 likely came from this order on March 2000 from  
6 ANDA?

7 A. It certainly could have.

8 Q. You can't say with a certainty one way  
9 or the other?

10 A. Well, I just want to make sure there  
11 wasn't any other ones. I mean, that's the one I  
12 would choose, yes, because of the date.

13 (Viewing documents.) I'm -- I'm  
14 apt to agree with that, because I don't see  
15 anything else that --

16 Q. Now, can you explain for the jury how  
17 Ven-A-Care went about obtaining that particular  
18 price for that NDC of Ipratropium Bromide, and  
19 then actually purchasing the drug?

20 A. Well, generally, with this wholesaler,  
21 they would have catalogs or they'd have fliers  
22 that they'd send, you know, frequently updating.



1           Let's see who called. Sometimes it  
2       tells you who did. You just pick up the phone  
3       and go through the catalog and give them a  
4       catalog number and order what you wanted, and  
5       then they'd ship it to you.

6           Q. Now, in terms of ANDA, I just want the  
7       jury or the judge to understand what ANDA is.  
8       ANDA is a large generics wholesaler; isn't that  
9       correct?

10          A. Yeah. I think they call themselves  
11       specialty wholesalers, because they're a -- they  
12       specialize, this one does, especially in  
13       inhalation drugs. But yeah, they're wholesalers.

14          Q. Well, ANDA itself is one of the largest  
15       distributors of generics in the United States,  
16       isn't it?

17          A. Is it?

18          Q. I'm just asking.

19          A. I don't know.

20          Q. You don't know one way or the other?

21          A. No.

22          Q. But it wouldn't surprise you to know it

1 was one of the largest in the United States?

2 A. No, it wouldn't.

3 Q. Did you need -- and what I mean by  
4 "you," Ven-A-Care.

5 A. Uh-huh.

6 Q. Did Ven-A-Care require any -- any  
7 contractual agreement with ANDA to make this  
8 purchase?

9 A. No.

10 Q. Did Ven-A-Care need to be a member of  
11 ANDA or any affiliated group to make the  
12 purchase?

13 A. Not that I'm aware of, no.

14 Q. Is it fair to say that -- that what was  
15 required to make a purchase from ANDA Generics,  
16 at this time, in March 2000, as far as you know,  
17 was to be a licensed purchaser of pharmaceutical  
18 products?

19 A. I want to say you have to be a licensed  
20 pharmacy. You know, pharmacies are legally able  
21 to purchase pharmaceuticals.

22 Q. And when say "pharmacy," this could

1 include any licensed retail pharmacy in the  
2 country?

3 A. Yes.

4 Q. And it would include any long-term care  
5 facility in the country?

6 MR. BREEN: Objection. Form.

7 THE WITNESS: I'm not sure. I mean,  
8 long-term care facilities purchase medications.

9 I know that I've seen them --  
10 especially like in GPO contracts, where they have  
11 specialty pricing for them. As long as it has a  
12 pharmaceutical license, I don't see why it  
13 couldn't. I'm just -- I just don't.

14 BY MR. GORTNER:

15 Q. How about closed pharmacies like Ven-A-  
16 Care? They could purchase.

17 A. Oh, sure. Yeah. Closed. Closed. Uh-  
18 huh.

19 Q. How about hospital pharmacies?

20 MR. BREEN: Objection. Form.

21 THE WITNESS: Well, hospital pharmacies  
22 can purchase from anyone that wants to sell to

1       them. That's for sure.

2       BY MR. GORTNER:

3           Q.    So hospital pharmacies could purchase  
4       from ANDA Generics this same product, correct?

5           A.    Yes.

6           Q.    And it was your view that this 12.95  
7       price was -- was a widely-available price in the  
8       marketplace?

9           A.    Well, certainly if it's available  
10      through ANDA -- and then I look -- if you look  
11      back here. Let's see. There's a McKesson price  
12      that's close in that same time frame.

13          Q.    If you actually turn to VAC MDL 59589,  
14      there's a slightly different McKesson price,  
15      which we'll get to in a moment.

16          A.    Maybe that's what I was thinking. And  
17      that was, what, in March of '00? Okay. No.  
18      Yes. I -- I believe it was available.  
19      Certainly.

20          Q.    Why don't we turn to the McKesson  
21      invoice, which is on VAC MDL 59589. And that  
22      appears to be an invoice from a couple weeks